IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.480 OF 2005

IN

F.A. NO.801 OF 2003

Smt. Neelima S. Sansar .. Applicant

vs.

M/s. Dwelling House Construction Co. & Ors. .. Defendents.

Mr.K.K.Tated for the Applicant

Ms.Hetal Patel, for the Defendent No.1.

CORAM : Smt.Ranjana P. Desai, J.

DATED : 28th April, 2005.

P.C. :

1. This civil application is filed by the appellant who is the original plaintiff in suit 5376 of 1994. (For convenience the applicant is referred to as the appellant) It is prayed that the office of the City Civil Court at Bombay be directed to refund the sum of Rs.2,68,000/- with interest, if any, accrued thereon without prejudice to the rights and contentions of the appellant, to the appellant.

2. Ms.Hetal Patel is representing Respondent. No.1. Respondent nos.2,3 and 4 have been served by

the learned counsel of the appellant by advocate's notice through courier. Affidavit of service is also filed. It appears that the appellant had filed the civil suit No.5376 of 1994 for a declaration that the agreement of sale entered into between her and defendant No.1 partnership firm in respect of the suit flat is valid, subsisting and binding upon the parties to the agreement and for possession. There was also a prayer for injunction restraining defendant No.1 from creating third party interest in the suit flat. That suit was dismissed by the trial Court on 25.09.2002. Against the said judgment and order, the present first appeal is filed. It is stated in the civil application that in the trial Court at the time of consideration of the interim application for injunction to show his bonafides, the appellant deposited a sum of Rs.2,68,000/- in the trial Court. Mr.Tated states that as per the order of the City Civil Court, the said amount has been invested in a nationalised bank. Mr.Tated states that he has made necessary enquiry in the office of the City Civil Court and on the basis of the said enquiry, he is making the present statement. In view of the above, Mr.Tated states that the civil application be granted and the City Civil Court be directed to refund the sum of

Rs.2,68,000/- to the appellant.

3. I have heard the learned counsel for respondent No.1. She states that the respondent No.1 will submit to the orders of the Court. As far as respondents Nos.2 and 4 are concerned though the appellant has served notice on them, they have not chosen to appear in this Court. In view of this in my opinion, the City Civil Court will have to be given a direction to allow the appellant to withdraw the said amount of Rs.2,68,000/- with interest accrued thereon. However, the appellant will have to file an undertaking in this Court that in case at the final hearing of this appeal it is found necessary, the appellant shall deposit the said amount with interest accrued thereon in this Court. Such undertaking will be filed by the appellant within one week from today. Hence, following order:

i) The City civil Court at Bombay is directed to allow the appellant Smt.Neelima S. Sansare to withdraw the sum of Rs.2,68,000/- with interest accrued thereon, if such an application is made.

ii) The appellant Smt.Neelima S. Sansare

shall file an undertaking in this Court that if at the final hearing of this first appeal it is found that the said amount is required to be deposited in this Court she shall deposit the same amount together with interest accrued thereon. Such affidavit be filed within a period of one week.

iii) The City Civil Court shall allow withdrawal of the said amount in this court only if copy of the above mentioned undertaking is annexed to the application made in the City Civil Court.

4. The Civil Application is, accordingly, disposed of.

5. Parties to act on authenticated copy of this order.

(Judge)